

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3366 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

-----  
A'BAD DIST CO-OPERATIVE BANK LTD

Versus

MAHENDRAKUMAR V GUNJAL

-----  
Appearance:

MR GM JOSHI for Petitioner

MR TR MISHRA for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/03/96

ORAL JUDGEMENT

Rule. Mr.T.R.Mishra waives service of the Rule.  
In view of the request of both the sides the matter is  
taken up for final hearing today.

The respondent-workman was working with the  
petitioner Co-operative Bank. There is dispute whether  
he was on daily wages or was working as peon but the  
Labour Court has recorded the finding that he was working  
as peon. It is also not in dispute that from 4th  
September, 1986 the services of the petitioner had been  
terminated orally and while terminating his services the  
requirement of section 25-F of the Industrial Disputes

Act had not been followed. The Labour Court has recorded the finding by its order dated 30.10.1993 that respondent workman had completed a period of 240 days and was therefore entitled to protection of section 25-F of the Industrial Disputes Act. The termination was therefore held unlawful and the relief of reinstatement with full backwages and continuity of service was granted. This order dated 30.10.1993 passed by the Labour Court was later on confirmed by the Industrial Court on 12.12.1994 as the proceedings arose out of Bombay Industrial Relations Act. It is this order dated 12.12.1994 passed by the Industrial Court, Ahmedabad read with order dated 30.10.1993 passed by the Labour Court, Ahmedabad which is under challenge in this petition.

I have heard learned counsel for both the sides and have gone through the record. So far as the relief of reinstatement and continuity of service is concerned, no exception whatsoever can be taken because the provision of section 25-F had not been complied with while terminating the services of the respondent workman in the year 1986 and no interference whatsoever for that purpose is warranted. Regarding the question of backwages Mr.T.R.Mishra has frankly submitted that there is no reasoning contained in the order passed by the Labour Court for granting full backwages and that his client would be satisfied if the relief of full backwages is reduced to that of 50% of the backwages in the facts of the case. This suggestion made by Mr.T.R.Mishra for modification of the order passed by the Labour Court in respect of the backwages is half heartedly resisted by the learned counsel for the petitioner. Looking to the facts and circumstances of the case that the termination was effected in patent violation of provision of the Industrial Disputes Act and no details have been made available with regard to the intervening period in respect of the gainful employment of the respondent workman, I find that the concession made by Mr.Mishra for reduction of backwages to 50% is quite reasonable and deserves to be accepted. Accordingly the order dated 30.10.1993 passed by the Labour Court, Ahmedabad as confirmed by the Industrial Court, Ahmedabad on 12.12.1994 is hereby upheld to the extent of the relief of reinstatement with continuity of service and with regard to the full backwages the same shall be modified to the extent of 50% backwages. This Special Civil Application is accordingly allowed in part and the rule is made absolute in the said terms. Mr.G.M.Joshi, appearing on behalf of the petitioner has stated that the respondent workman shall be reinstated in service within a period of ten days from today and the 50% amount of the

backwages under the order of the Labour Court and full wages for the period from 1.11.1993 (date of Labour Court's order being 30.10.1993) upto the date he is taken back in service shall be paid within a period of six weeks from today. No order as to costs. Direct service is permitted.

-----